

**CODE OF SHELBY COUNTY, TENNESSEE  
PART II - CODE OF ORDINANCES**

**Chapter 2. Administration**

**Article II. Administration and Finance**

**Division 2. Purchasing Procedures**

**Sec. 2-56. Definitions.**

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*County purchasing agent* means the administrator of purchasing.

(Priv. Acts 1974, Ch. 260, § 4.03(9))

**Cross references:** Definitions and rules of construction generally, § 1-2.

**Sec. 2-57. Department of purchasing generally; general duties of administrator.**

(a) There is established a county department of purchasing with an administrator of purchasing appointed by the county mayor. The administrator of purchasing shall be qualified by training and experience to perform his duties in a proficient manner and in accordance with the generally recognized principles of governmental purchasing. He shall serve at the pleasure of the county mayor. The administrator of purchasing, or his designated department or designee shall:

(1) Contract for and purchase all supplies, material, equipment, building and contractual services required by any official or office of the county government, or which is supported by, or under control of, the county government and which expends or encumbers any of the county funds. No other official or office of the county may make such purchases or contracts, except as the county purchasing agent, with the approval of the director of the division of administration and finance, delegates this authority after an appropriate bond is maintained.

(2) Arrange the rental of machinery, buildings and equipment when the rents are to be paid out of funds belonging to the county or any of its offices. No other official or office of the county may arrange for such rentals, except as the county purchasing agent, with the approval of the director of the division of administration and finance and the county mayor, delegates this authority after an appropriate bond is maintained.

(3) Transfer materials, supplies and equipment to or among county officials and offices as needed for the proper and efficient administration of the county government.

(4) Have charge of any central storeroom or similar service which may be established for the handling of the county's business.

(b) The county purchasing agent, together with the director of the division of administration and finance and with the approval of the county mayor, shall adopt and promulgate, and may from time to time amend, rules and regulations not inconsistent with the provisions of this article, governing the purchase or rental of supplies, materials, equipment, buildings, and contractual services as follows:

(1) Authorizing in writing any county official or office to make purchases in the open market for immediate delivery in emergencies, defining emergencies, and describing the manner in which emergency purchases shall be made and promptly reported to the county purchasing agent.

(2) Prescribing the manner in which supplies, materials and equipment shall be requisitioned, purchased, delivered, stored and distributed.

(3) Prescribing the dates for submitting requisitions and estimates, the future period they are to cover, the form in which they are to be submitted, the manner of their authentication, and their revision by the county purchasing agent.

(4) Prescribing the manner of inspecting all deliveries of supplies, materials and equipment, and of making or procuring chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications.

(5) Requiring periodic and special reports by county officials and officers of surplus, unusable and obsolete supplies and equipment on hand, and prescribing the form of such reports.

(6) Providing for the transfer to or among county officials and offices of supplies, materials and equipment on hand, which are surplus to one office or official but are needed by another; and providing for the disposal or sale, after receipt of competitive bids, supplies, materials and equipment which are obsolete or unusable.

(7) Determining whether or not a deposit, bond or letter of credit is to be submitted with a bid on a purchase contract or sale, and if required, prescribing the amount and form thereof, and providing that the surety may be forfeited if the successful bidder refuses to enter into a contract within ten days after the award.

(8) Prescribing the manner in which invoices for supplies, materials, equipment and contractual services delivered to any county official or office shall be submitted, examined and approved.

(9) Providing for all other matters as may be necessary to give effect to the foregoing rules and to the provisions of this article.

(10) The following applies to purchases, sales, contracts for services and competitive bids:

a. All purchases of and contracts for purchases of supplies, materials, equipment, buildings and contractual services, and all sales of surplus, obsolete or unusable county property shall be based whenever possible on competitive bids; but contracts for legal services and similar services by professional persons shall not be based upon competitive bids, but shall be awarded on the basis of recognized competence and integrity at customary rates of compensation; and bids need not be required for services for which the rate or price is fixed by a public authority authorized by law to fix such rates or prices. Other exceptions to and/or exemptions from the competitive bid requirement include joint procurement with other governmental entities; "piggyback" purchases from other federal, state or local government contracts; customer directed sources; and the purchase of certain perishable products.

b. The county may purchase, sell or exchange materials, supplies, commodities, equipment and real estate from, to or with any federal, state or local government or office without conforming with the competitive bidding requirements of this section, provided the sale, purchase or exchange is based upon the fair market value of such sales to, purchases from or exchanges with other such governmental entities. The county may, subject to county commission approval, also donate such property to any federal, state, or local governmental entity, provided the donation is for a public purpose found by the county government to be directly or indirectly

beneficial to the citizens of the county. Nothing herein shall prohibit the transfer of such property to a local governmental entity by donation for educational purposes, provided, however, that such governmental entity is in compliance, or becomes compliant prior to acceptance of any such donation, with all antidiscrimination laws, including, but not limited to, Titles VI and VII of the Civil Rights Act of 1964.

c. If the amount of the expenditure or sale is estimated to exceed \$50,000.00, sealed bids shall be solicited. The county purchasing agent shall solicit sealed bids by public notice inserted at least two times in a newspaper of general circulation, allowing sufficient time for bids to be submitted. In addition, he may also, when he deems it necessary or desirable, solicit sealed bids by sending requests for bids by mail or electronic solicitation to prospective bidders. All notices for bids shall include a general description of the materials, supplies, equipment or contractual services to be purchased or property to be sold and shall state where bid forms and specifications may be obtained and the time and place of opening bids.

d. All purchases or sales of less than \$50,000.00 in amount may be made in the open market without newspaper notice, but shall, when practicable in the judgment of the county purchasing agent, be based upon at least three competitive bids. Requisitions for items estimated to cost more than \$5,000.00 shall not be subdivided in order to circumvent the requirement for public newspaper notice herein provided for. All sales shall be made for cash to the highest bidder.

e. Bids in purchases shall in all cases be based on the standards adopted and promulgated by the county purchasing agent and approved by the chief administrative officer and the county mayor.

f. All open market orders or contracts shall be awarded to the most responsive bidder who is financially responsible, taking into consideration the qualities of the articles to be supplied, their conformity to specifications, their suitability to the requirements of the county government, and the delivery terms. Any or all bids may be rejected for good cause.

g. All bids taken under the requirements of this section and all other documents, including purchase orders pertaining to the award of contracts on the bids, shall be preserved by the county purchasing agent for a period of five years.

h. If two or more bids received on a pending contract are the same unit price or total amount, the county purchasing agent may reject all bids or may purchase the required supplies, materials, equipment or contractual services from any of the most responsive bidders, provided the price paid does not exceed the original bid price.

i. All sealed bids received shall be opened publicly at the time and place fixed in the advertisement. Each bid, with the name and address of the bidder, shall be entered on a record and the name of the successful bidder indicated thereon; and this record shall, after the award of the contract or order, be open to public inspection.

j. All contracts shall be approved as to form and legality by the county attorney, and the original copy of each contract shall be filed with the contracts administration department.

k. Purchases shall be made and purchase orders and contracts of purchase shall be issued only in consequence of a written requisition for the supplies, materials, equipment or contractual services required, which requisitions shall be signed by the head of the county office requiring the articles or services, or in the case of elected officials, a name other than a department head, may be submitted to the purchasing department if requested in writing by said elected official. Original copies of all requisitions shall be kept on file in the office of the county purchasing agent.

1. The county purchasing agent may purchase and contract to purchase materials, supplies, equipment and contractual services on a fiscal year basis, but no commitment shall be made which extends beyond the end of the current fiscal year for which appropriations have been made by the county commission except after commitments as have been approved by resolution of the county commission. In the determination of the county's annual needs of certain articles and services, the county purchasing agent may request the county officials and offices to estimate their needs for the remainder of the current fiscal year and to issue requisitions based upon these estimates. (Priv. Acts 1974, Ch. 260, § 4.03(9); Ord. No. 198, 3-23-98; Ord. No. 320, 2-5-07; Ord. No. 325, 4-9-07; Ord. No. 366, 10-6-08)

**Sec. 2-58. Requests for proposals initiated by county commissioners.**

(a) Each request for proposal (RFP) initiated by a county commissioner or commissioners shall be initiated by presentation of a resolution to the board of county commissioners. The resolution shall include a brief description of the products and/or services sought. A complete summary shall be attached to the resolution detailing the products and/or services to be outlined in the request for proposal (RFP) and fully explaining the contract to be awarded.

(b) Any resolution adopted under the provisions of this section shall require majority approval by the board of county commissioners, the board having authority to authorize the solicitation of proposals for products and/or services. (Ord. No. 308, § 1, 11-21-05)

**Sec. 2-59. Availability of funds.**

Except in emergencies, no order for delivery on a contract or open market order for supplies, equipment or contractual services for any county official or office shall be made unless the availability of funds for the payment therefore has been first certified by the director of the division of administration and finance. (Priv. Acts 1974, Ch. 260, § 4.03(11))

**Sec. 2-60. Emergency purchases.**

The county purchasing agent, with the approval of the county mayor, may authorize any county official or office to purchase in the open market, without filing requisition or estimate, any supplies, materials, or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including, but not limited to, delays by contractors, delays in transportation and unanticipated volume of work; but the term "emergency," as used in this section, does not include conditions arising from neglect or indifference in anticipating normal needs. Emergency purchases may be made by other county officials or offices only when the office of the county purchasing agent is closed. At all other times, only the county purchasing agent, with the approval of the county mayor, may make emergency purchases. A report of all emergency purchases, together with a full and complete account of the circumstances of the emergency, made by other county officials or offices, shall be made in writing by the official or offices that make the purchase to the county purchasing agent before the close of the next working day following the date of the purchases. This report shall be kept on file in the office of the county purchasing agent and shall be open to public inspection. (Priv. Acts 1974, Ch. 260, § 4.03(12))

**Sec. 2-61. Purchase orders.**

Each purchase order or contract issued or executed pursuant to the provisions of this article shall be evidenced by a pre-numbered, written order, signed by the county purchasing agent, setting forth all significant details respecting the order or contract. A copy of the order shall be furnished

to the vendor; one copy shall be furnished to the county finance department, and two copies shall be filed in the office of the county purchasing agent--one copy filed in numerical order and the other copy filed alphabetically by the name of the vendor. (Priv. Acts 1974, Ch. 260, § 4.03(13))

**Sec. 2-62. Supplies, materials and equipment needed.**

The county purchasing agent shall classify the requirements of the county government for supplies, materials and equipment; shall adopt as standards the smallest number of quantities, sizes and varieties of such supplies, materials and equipment consistent with the successful operation of the county government, and shall prepare, adopt and promulgate written specifications describing these standards. In the preparation and revision of these standards, the county purchasing agent shall seek the advice, assistance and cooperation of the county officials and offices concerned to ascertain their precise requirements. Each specification adopted for any article shall, insofar as possible, satisfy the requirements of the county officials and offices which use that article. (Priv. Acts 1974, Ch. 260, § 4.03(14))

**Sec. 2-63. Payment for proper purchases.**

The county is liable for the payment of all purchases of supplies, materials, equipment and contractual services, made in accordance with the provisions of this article, but is not liable for the payment of such purchases made contrary to the provisions of this article. (Priv. Acts 1974, Ch. 260, § 4.03(15))

**Sec. 2-64. Unqualified bidders.**

(a) Neither the county purchasing agent nor any other county official, nor any member of the board of county commissioners shall be financially interested or have any personal beneficial interest, directly or indirectly, in any lease, construction contract or other contract entered into by the county, its officials or officers, or in any property used by or furnished to the county, its officials or officers; nor shall any of such persons accept or receive, by rebate, gifts, or otherwise from any person to whom any contract or purchase order may be awarded, any money or things of value whatsoever, or any promise, obligation or contract for future reward or compensation.

(b) Any individual or company that has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving governmental sales or purchases, including, but not limited to rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and contracting, shall not be considered a qualified bidder and shall not enter into a bid, contract, or purchase order with the county for a period of 36 months from the date of conviction thereof. (Priv. Acts 1974, Ch. 260, § 4.03(16))

**Sec. 2-65. Reserved.**

**Sec. 2-66. Authority to enter into contracts.**

(a) Except as otherwise provided in this article the county mayor shall have the sole power and authority to enter into contracts on behalf of the county, subject to budgetary limitations, except for contracts that are in the nature of franchises, as authorized by and in accordance with, the county Charter. Contracts and purchases on behalf of the county government shall be entered into as follows:

(1) Up to \$100,000.00 by the county purchasing agent as approved by the county mayor.

(2) Over \$100,000.00 by the county purchasing agent as approved by the county mayor and the board of county commissioners.

(b) The board shall have the sole power to grant franchises by resolution, provided no such franchise shall be granted for a period to exceed 30 years, as authorized by, and in accordance with the county Charter. Additionally, no sale of real property, or any interest therein shall be valid unless approved by the board, as authorized by and in accordance with the Shelby County Charter.

(c) The provisions of this chapter do not apply to county school funds for any purpose, or to the county board of education or the county superintendent of education. The provisions of this chapter do not apply to the Shelby County Health Care Corporation. (Priv. Acts 1974, Ch. 260, § 4.03(18))

**NOTES:** 1. Sec. 2-66(c) added by Ch. 306, Pvt. 1978.

**Sec. 2-67. Locally owned small business purchasing program.**

(1) The board of county commissioners may establish by ordinance special purchasing procedures for not less than 20 percent of the annual purchases of the county government to be supplied by locally owned small businesses.

For purposes of this section, the term "locally owned small business" means:

(a) Any business if its average annual total sales or receipts within its last three fiscal years prior to its application for participation to submit bids in the locally owned small business purchasing program were less than \$5,000,000.00 a year; and

(b) Such business is headquartered and physically located in Shelby County and one or more residents of Shelby County have a beneficial ownership of not less than 51 percent of the business.

(2) There is hereby established a locally owned small business purchasing program for Shelby County which shall be governed by the following rules and regulations:

(a) *Definitions.*

(i) "Business" means and includes individuals, sole proprietorships, unincorporated groups or associations, partnerships, corporations, joint ventures, and every other form of business entity.

(ii) "Goods and services" means and includes supplies, materials, commodities, equipment, labor, and rental or lease of supplies, materials, commodities and equipment.

(iii) "Joint ventures, consortiums and partnerships" means those business entities that are formed to contract with the county government through the locally owned small business purchasing program. These business entities shall have written agreements which demonstrate that the eligible locally owned small business as defined herein has a beneficial ownership interest of no less than 51 percent, and shall be involved in the daily management and contract of the project.

(b) *Rules and regulations.*

(i) The administrator of purchasing in conjunction with the administrator of the equal opportunity compliance office (EOC) shall identify certain goods and services required by the county to be set aside for special purchasing procedures for locally owned small businesses.

(ii) Only certified locally owned small businesses will be allowed to submit competitive bids on the goods or services identified under paragraph (2)(i) above.

(iii) The administrator of purchasing shall, in conjunction with the administrator of EOC, annually review the Shelby County Capital Improvement Program to determine those projects with a construction cost of \$250,000.00 or more. Contracts amounting to at least ten percent of the construction costs of such project shall be awarded to locally owned small businesses as defined herein, except as set forth in sub-paragraph (vi) of this subsection, either as part of the conditions of the solicitation for general contractors bidding on these projects, or as separate bids issued by the county for subcontracts that may be assigned to general contractors.

(iv) After adhering to all other bidding and purchasing requirements of the county, not inconsistent with this article, if no bids are received from locally owned small businesses, then the county may solicit bids for the goods or services from all other sources.

(v) On all purchases and/or contracts entered into by the county, the administrator of purchasing, or his designee, shall have the right to negotiate with any supplier of goods or services to the county for the inclusion of locally owned small business subcontractors and/or suppliers in the contract award.

(vi) Failure by a supplier or contractor to include locally owned small business subcontractors or suppliers in its bid or contract may be grounds for rejection of said bid or contract unless the supplier or contractor can show documented evidence of good cause why none were included.

(vii) Any locally owned small business awarded a contract or purchase order under this section shall not sublet, subcontract or assign any work or services awarded to it without the prior written consent of the mayor or the administrator of purchasing.

(viii) As to those purchases below the requirement for a formal bid solicitation (currently, under \$15,000.00) and not included in the locally owned small business set aside, the administrator of purchasing shall determine if any locally owned small business offers that product or service. If so, at least one such eligible locally owned small business should be included in the vendors contacted for an opportunity to bid, and the administrator of purchasing may, at his discretion, designate in a purchase order the purchase of such goods and services from the identified locally owned small business.

(ix) In those situations where a locally owned small business as defined herein, engages in open competitive bidding for county contracts, the administrator of purchasing shall provide for a preference for the locally owned small business where responsibility and quality are equal. Said preferences shall not exceed five percent of the lowest possible bidder meeting specifications. The preference shall be applied on a sliding scale in the following manner:

- a. A preference of up to five percent shall be allowed for contracts up to \$500,000.00;
- b. A preference of up to 3 and 5/10 percent shall be allowed for contracts up to \$750,000.00.
- c. A preference of 2 and 1/2 percent shall be allowed for contracts up to \$1,000,000.00.
- d. A preference of two percent shall be allowed for contracts that exceed \$1,000,000.00.
- e. For construction contracts over \$2,000,000.00, a two percent preference shall be given to the bids of general contractors that meet the requirements of subsection (1)(b) and which have locally owned small businesses as subcontractors when such locally owned small businesses collectively have 50 percent of the total work in the bid.

(x) The administrator of purchasing may divide a single bid package for any purchase of goods and services into two or more smaller bid packages in any case that the administrator of purchasing reasonably believes that the smaller bid packages will result in a greater number of bids by locally owned small businesses.

(xi) The administrator of purchasing, upon approval of the county mayor, may establish special insurance and bonding requirements for certified locally owned small businesses so long as they are not in conflict with the laws of the state.

(xii) The administrator of purchasing, with the approval of the county mayor, shall adopt and promulgate, and may from time to time, amend rules and regulations not inconsistent with the provisions of this article, governing the purchase of goods and services from locally owned small business concerns to effectuate and implement the locally owned small business purchasing program within the intent of this section.

(xiii) The administrator of EOC shall, in conjunction with the administrator of purchasing, provide a written quarterly report to the mayor and board of county commissioners which shall include a summary of the purchases selected for this program, a listing of the contracts awarded to locally owned small businesses for the period, and the dollar amounts of each such contract, and the percentage which such contracts bear to the total amount of purchases for the period.

(c) *Eligibility.* In order to qualify for consideration as a supplier or contractor for any portion of the supplies, equipment and services established and identified under this section, the businesses defined herein shall:

(i) Submit an application for certification of eligibility to the administrator of EOC;

(ii) Complete and submit all necessary forms for eligibility certification to the administrator of EOC.

(iii) Submit an application for annual re-certification in compliance with the rules set forth above. The county may at any time, not more than quarterly, request additional information to determine whether a locally owned small business has exceeded the dollar limit, as set forth above. The county may decertify or disqualify at any time any locally owned small business that is in noncompliance with any of the provisions of this section. The county further requires that all certified locally owned small businesses apply for re-certification on an annual basis.

(iv) The EOC office shall review the information submitted and other information deemed necessary to make a determination of eligibility. Within 30 days of the receipt of the required information, the EOC office shall advise the applicant in writing as to its eligibility.

(v) In the event the EOC office determines that the business is not eligible, the written communication to the business shall include a detailed statement of the reasons for the negative decision.

(vi) In the event that the business to which a negative decision has been rendered disagrees with the determination, such business must petition the administrator of EOC for a review of this decision within ten days of receipt of notification of denial of eligibility. If after review by the administrator of EOC, eligibility is still denied, such business may submit the matter to the chair of the board of county commissioners, or a commissioner designated by the board chair to review such matters, for an independent review and determination. Said decision of the board or its designee shall be final. (Ord. No. 324, §§ 1, 2, 3-26-07)

## **Sec. 2-68. Reserved.**

## **Sec. 2-69. Purchase of property and casualty insurance and fidelity and surety bonds.**

(a) The purchase of all types of property and casualty insurance coverage and/or fidelity and surety bonds required by the county government or any of its officials shall be through the sealed bid process, or negotiation with the present carrier.



(b) A renewal of insurance or bond coverage through negotiations with a present carrier shall not exceed three years, without competitive bidding. (Ord. No. 35, 11-21-88)

**Sec. 2-70. Purchase of supplies, materials, and equipment through negotiation.**

(a) The purchase of supplies, materials and equipment by the county government may be purchased through negotiations if the following conditions exist:

(1) The administrator of purchasing has determined that the items are available from only one source;

(2) The administrator of purchasing certifies same to the county mayor;

(3) The county mayor or his designee negotiates said purchases; and

(4) The administrator of purchasing certifies that the specifications for a purchase were not specifically designed to create a sole/single supplier; and

(5) The administrator of purchasing has determined that said purchase is economically beneficial to the County.

(b) The county mayor may authorize the administrator of purchasing to negotiate a reduction in price with the most responsive bidder.

**Sec. 2-71. Purchase of supplies, materials and equipment from a sole/single source through negotiation.**

(a) The purchase of supplies, materials and equipment by the county government may be purchased through negotiations if the following conditions exist:

(1) The administrator of purchasing has determined that the items are available from only one source;

(2) The administrator of purchasing certifies same to the county mayor;

(3) The county mayor or his designee negotiates said purchases; and

(4) The administrator of purchasing certifies that the specifications for a purchase were not specifically designed to create a sole/single source supplier.

(b) The county mayor may authorize the administrator of purchasing to negotiate a reduction in price with the most responsive bidder.

(c) The county mayor may authorize the administrator of purchasing to negotiate with the next most responsive bidder as an alternative source in order to insure continued availability of supplies, material and equipment purchased as well as a reduction in price.

(d) All other requirements for entering into and approval of contracts shall remain the same.

(e) For purposes of notifying the board of county commissioners, the administrator of purchasing shall copy the board of county commissioners on all written requests to the county mayor seeking authorization to negotiate and enter into a contract with a sole/single source and shall post a copy of said written request on the County website for purposes of notifying the public.

**Sec. \_\_\_\_\_. Change orders for capital construction projects.**

(a) For the purposes of this section:

(1) *Scope of the project* means the construction and services that were approved by the board of county commissioners, whether completed in whole or in part, and includes all labor, materials, equipment, and services required to fulfill the contractor's obligations

under the contract and the project plans and specifications available and/or referenced by the request for sealed bid.

(2) *Minor change* means a change in the scope of the project which does not involved an adjustment in the total contract price, an extension of time to complete contract performance, or a change that is inconsistent with the intent of the contract or the project plans and specifications available and/or referenced by the request for sealed bid.

(b) All change orders for capital construction projects shall be approved by the board of county commissioners for:

(1) Any change that exceeds the contingency amount originally approved by the board of county commissioners; or

(2) Any change that is inconsistent with, or differs from, the original intent and/or scope of the project.

(c) The designated county construction project manager shall review and recommend all change orders and shall have the authority to order minor changes.

(d) The designated county construction project manager may recommend an allowance for capital construction project change orders as follows:

(1) An allowance of up to 10 % of the contract amount for contracts in an amount up to \$500,000;

(2) An allowance of up to 7 % of the contract amount for contracts in the amount of \$500,000 up to \$10,000,000; and

(3) An allowance of up to 5 % of the contract amount for contracts in an amount over \$10,000,000.

(e) The board of county commissioners may approve a change order allowance greater than that authorized by subsection (d) of this section.